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BALL JANIK LLP

A T T O R N E Y S

1435 F STREET NW, SUITE 225
WASHINGTON, D.C. 20005

www.balljanik.com

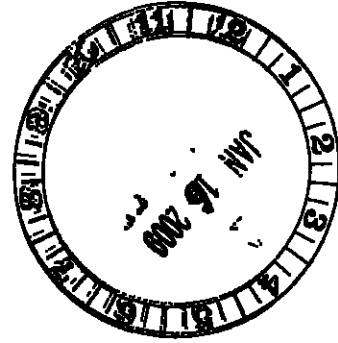
TELEPHONE 202 638 3307

FACSIMILE 202 783 6947

KARL MORELL

kmorrell@dc.bjllp.com

January 16, 2009



The Honorable Anne K. Quinlan
Acting Secretary
Surface Transportation Board
395 E Street S.W.
Washington, DC 20423-0001

Re STB Finance Docket No. 35187, Grand Elk Railroad, LLC – Lease
and Operation Exemption – Norfolk Southern Railway Company


Dear Acting Secretary Quinlan:

Attached are the original and ten (10) copies of Grand Elk Railroad's
Reply to the Comments filed by State Senator Basham on January 12, 2009.

Please time and date stamp the extra copy of the Reply and return it with
our messenger.

If you have any questions, please contact me.

Sincerely yours,


Karl Morell

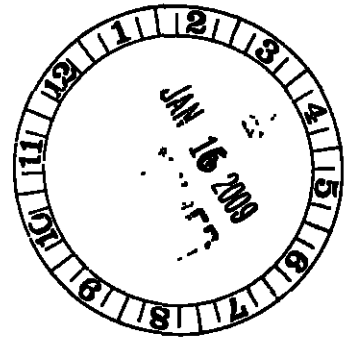
Enclosures

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BEFORE THE
SURFACE TRANSPORTATION BOARD

STB FINANCE DOCKET NO 35187

GRAND ELK RAILROAD, L L C
--LEASE AND OPERATION EXEMPTION--
NORFOLK SOUTHERN RAILWAY COMPANY



REPLY TO COMMENTS OF STATE SENATOR RAYMOND E. BASHAM

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KARL MORELL
Of Counsel
BALL JANIK LLP
Suite 225
1455 F Street, N W.
Washington, D C 20005
(202) 638-3307

Attorney for.
GRAND ELK RAILROAD, L L C and
WATCO COMPANIES, INC

Dated January 16, 2009

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB FINANCE DOCKET NO 35187

GRAND TRUNK RAILROAD, L L C
--LEASE AND OPERATION EXEMPTION--
NORFOLK SOUTHERN RAILWAY COMPANY

REPLY TO COMMENTS OF STATE SENATOR RAYMOND E BASHAM

Grand Trunk Railroad, L.L.C. ("GTR") and Watco Companies, Inc. ("Watco") hereby reply to the Comments of Michigan State Senator Raymond E. Basham ("Senator Basham") filed with the Surface Transportation Board on January 12, 2009 ("Comments")

PROCEDURAL BACKGROUND

On November 3, 2008, GER filed its Verified Notice of Exemption, pursuant to 49 C.F.R. Part 1150, Subpart D—Exempt Transactions, to permit GER to lease and operate approximately 122.9 miles of rail lines owned by Norfolk Southern Railway Company ("NS") in Michigan and Indiana (the "Line"). In the Notice of Exemption, GER explained that its projected annual revenues may exceed \$5 million and that, consequently, GER was in the process of complying with the notice requirements of 49 C.F.R. § 1150.32(c). On November 25, 2008, GER certified its compliance with Section 1150.32(e). On December 1, 2008, GER revised its certification.

On November 26, 2008, the Michigan Economic Development Corporation ("MEDC") filed a request to stay the notice of exemption. GER filed a reply in opposition on December 12,

2008, and NS filed a reply in opposition on December 15, 2008. By decision served December 22, 2008, in this proceeding, MEDC's stay request was denied.

On December 22, 2008, United Transportation Union ("UTU") filed a Petition for Stay. Replies to the Petition for Stay were filed by NS on December 23, 2008 and by GER on December 24, 2008. On January 12, Senator Basham filed the Comments to which this reply is addressed.

REPLY

Senator Basham does not oppose the proposed transaction. Instead, Senator Basham expresses some concerns and asks the Board to impose certain conditions and engage in certain studies before the Notice of Exemption becomes effective. Senator Basham's concerns, however, are based on erroneous information and faulty assumptions. Contrary to Senator Basham's contentions, the proposed transaction will improve service and lower rates to the shippers located along the Line. In addition, the proposed transaction will result in significantly improved track and track structures along the Line, including public crossings and two yards. Moreover, GER is confident that it will be successful in reversing the significant decline in traffic on the Line and, therefore, be of considerable benefit to the ailing Michigan economy.

Senator Basham alleges that by substituting GER (a Class III carrier) for NS (a Class I carrier) on the Line, "captive shippers will most assuredly see a degradation of equipment while at the same time experience an increase in shipping costs." Comments at 1. The history of the short-line industry during the past 30 years, however, reveals that the opposite will occur. Numerous light density rail lines owned by Class I railroads, such as the Line, have been saved from extinction by their sale or lease to a locally based, lower-cost, entrepreneurial operator.

This transaction is the very type of pro-competitive transaction that the Board and its predecessor, the Interstate Commerce Commission ("ICC"), have repeatedly endorsed and affirmed. As the ICC noted

[I]t has been our experience with transactions of this type that the acquiring firm will bring new vitality to the line. Typically, the new operator has closer ties to local communities and will provide better service, often at lower rates, and will work closely with shippers on the line.

Finance Docket No. 31089, *Montana Rail Link, Inc. – Exemption Acquisition and Operation – Certain Lines of Burlington Northern R. Co.* (not printed), served May 26, 1988, slip op. at 21. See also *Class Exemption for Acq. & Op. of Rail Lines*, 11 C.C. 2d 810, 813 (1985), *aff'd sub nom. Illinois Commerce Comm'n v. ICC*, 817 F.2d 145 (D.C. Cir. 1987) ("Transfer of a line to a new carrier that can operate the line more economically or more effectively than the existing carrier serves shipper and community interests by continuing rail service. [S]hortlines are dependent on local traffic for their survival, and thus have a greater incentive . . . to provide local shippers with service tailored to their needs")

GER's cost structure will be lower than NS's, which will lead to lower transportation costs for the customers on the Line. As a locally based carrier, GER will be more focused on improving service to existing customers and regaining the traffic that has been lost. GER intends to invest \$8.9 million in start-up capital to upgrade the Line and improve service to the customers on the Line.

Senator Basham's concern that the transaction will result in "degradation of equipment" is also misplaced. The only difference between the equipment used by NS now and the equipment GER will utilize will be the color of the locomotives. In fact, the reliability of the locomotives used on the Line will *increase* because, unlike NS, GER will open and operate a

locomotive repair facility on the Line in Grand Rapids. Also, a GER affiliate provides mobile locomotive repairs in the area. GER plans on spending \$4,084,000 to acquire and maintain locomotives so as to improve service on the Line.

Senator Basham claims that the railroad subsidiaries of Watco “are often among the most unsafe according to Federal Railroad Administration statistics” and therefore the change from a Class I to a Class III carrier “will affect the level of training and safety” of the employees to be hired by the GER. Comment at 2.¹ The Senator’s underlying assumption, however, is incorrect. According to Federal Railroad Administration (“FRA”) records, the Watco railroad subsidiaries have some of the best injury records in the industry. Also, Watco’s railroad subsidiaries have consistently been awarded the Jake Certificate Award and the Jake Certificate with Distinction Award from the American Short Line and Regional Railroad Association (“ASLRRA”).² For example, in the last two years, 14 Watco railroads won these safety awards.

Senator Basham is also concerned that the Dunn & Bradstreet (“D&B”) rating for Watco Transportation Services “will severely limit their access to the significant financial resources required for the capital improvement [to] be accomplished within the first year.” Comments at 2. These concerns are equally misplaced, for a number of reasons. First, Watco Transportation Services is a subsidiary of Watco, not Watco itself. Second, the D&B rating cited by Senator Basham is not based on data supplied by Watco or Watco Transportation Services. Neither company subscribes to D&B and neither company provides D&B any financial information as to Watco and Watco Transportation Services. Consequently, neither is aware of the sources of

¹ In STB Docket No. 35188, Watco, a non-carrier, filed a notice of exemption on November 3, 2008, pursuant to 49 C.F.R. § 1180.2(d)(2), for Watco to continue in control of GER upon GER’s becoming a Class III railroad. That exemption became effective on December 3, 2008.

² The Jake Certificate is awarded to any member of the ASLRRA that finishes the calendar year with a Frequency/Severity Index Rate less than or equal to the industry average. The Jake Certificate with Distinction is awarded to any member that has no reportable injuries.

information that form the basis of the rating for Watco Transportation Services or the accuracy of the information. Also, a D&B rating does not reflect the capitalization of a company or the sources of financing readily available to a company.

More importantly, GER has made a contractual commitment to NS to upgrade and maintain the Line to agreed upon minimum standards. The penalty for failure to keep that commitment is grounds for termination of the Lease Agreement between GER and NS. GER would not have made such a commitment if it were not certain of its ability to raise the necessary capital (either through capital contributions from Watco or financing).

Senator Basham correctly notes that GER intends to maintain the Line at a Class 2 level with top speeds at 25 mile per hour ("mph"). According to Senator Basham, that is below the current NS level of Class 3 with a top speed of 40 mph. Comments at 2. Senator Basham's understanding of current speeds on the Line as operated by NS is incorrect. Based on GER's inspection of the Line, the portion of the Line located north of Kalamazoo, MI is generally considered to be in Federal Railroad Administration ("FRA") Class 1 condition and the portion of the Line south of Kalamazoo is generally considered to be in FRA Class 2 condition. Current speed limits on significant portions of the Line are 10 mph, which GER will raise to 25 mph. GER will also replace the bridge in Portage, MI so as to allow weights of up to 286,000 pounds as apposed to the current weight limit of 267,000 pounds.

GER plans to spend \$2.7 million on track rehabilitation once it leases the Line from NS, including the replacement of 20,000 ties between Kalamazoo and Grand Rapids, bridge replacement in Portage and the rehabilitation of the Botsford Yard and Hughart Yard. The track rehabilitation and bridge replacement would not be necessary if the Line were in FRA Class 3 conditions.

Senator Basham alleges that there are currently twenty-eight public crossings on the Line that are listed as being “deficient” by the Michigan Department of Transportation Rail Safety Division (“MDOT”) Comments at 2-3 Senator Basham’s allegation, even if correct, would be all the more reason for the Board to permit GER to take over the operation and maintenance functions on the Line as soon as possible As previously indicated, GER is prepared to spend considerable sums of money to upgrade the Line and intends to maintain all grade crossings in compliance with Federal and state standards GER has been in contact with MDOT to discuss the allegation and to identify crossings that are in most immediate need of repair GER will work closely with MDOT to insure that all crossings are in full compliance with MDOT requirements.

GER agrees with Senator Basham that Hugart Yard and Botsford Yard are in need of attention. GER disagrees with his contention, however, that the proposed transaction “will put considerable strain” on these yards Comments at 3 GER intends to upgrade Botsford Yard to a much higher standard than it is in currently

Further, Botsford Yard will not see an increase in traffic in the immediate future, contrary to Senator Basham’s allegation In fact, the level of traffic will decline since the yard will no longer handle westbound traffic to Niles or eastbound traffic to Battle Creek, Jackson, Ypsilanti, Wayne and other locations Hugart Yard will also experience a decrease in traffic due to the closure of the General Motors plant in Wyoming, MI

There is no basis for Senator Basham’s concern that the Botsford Yard is “not set up to receive southbound freight ” Comments at 3 GER will handle all southbound traffic into the Botsford Yard as NS handles that traffic today Consequently, GER does not believe that a new connection into the Botsford Yard is necessary for southbound traffic

Finally, there is no merit to Senator Basham's request that the Board conduct an environmental impact and public safety study. Comments at 3. Neither of these studies is warranted or necessary. Although GFR expects to reverse the downward spiral of traffic moving to and from the Line, the thresholds of 49 C.F.R. § 1105.7(e)(4) and (5) will not be exceeded. Consequently, neither an Environmental Impact Statement nor an Environmental Assessment is required pursuant to 49 C.F.R. § 1105.6(b)(4). Also, there is no need for a public safety study, because GER is committed to making significant improvements to the Line which will enhance safe operations over the Line and, at the same time, improve the level of service being provided to the customers.

As previously noted, GFR intends to upgrade the tracks and, as a short line operator, improve service to the shippers located on the Line. Thus, delaying the implementation of the involved transaction in order to prepare environmental and safety studies will have a material, adverse effect on the shippers located on the Line by delaying the benefits they will realize once GER commences operations. Any delay in GER's operations will cause GER to incur significant expenses, result in a loss of business that will be unrecoverable and cause uncertainty among its employees and the shippers located on the Line.

GER's planned rehabilitation program will create new jobs and infuse money into the ailing Michigan economy. Also, any significant delay in the effective date of the Notice of Exemption will jeopardize GER's ability to complete the rehabilitation program during the construction season, thus significantly delaying GER's ability to upgrade service on the Line. Also, GER will be hiring more employees than are currently working on the Line. Consequently, GER's lease of the Line will not only improve service to the shippers on the Line but will also infuse capital into the Michigan economy and increase jobs at this critical time.

Senator Basham does not seek revocation of the Notice of Exemption and the Comments fail to meet the standard for revoking the class exemption in any event. The standard for revoking an exemption is whether regulation is needed to carry out the rail transportation policy of 49 U.S.C. § 10101-49 U.S.C. § 10502(d). Requests to revoke must be based on reasonable, specific concerns demonstrating that reconsideration of the exemption is warranted. *Minnesota Comm. Ry., Inc. - Trackage Exempt - B.N. RR. Co.*, 81 C.C. 2d 31, 35-36 (1991) ("*Minnesota Comm.*"), S1B Finance Docket No. 32766, *Portland & Western Railroad, Inc. -- Lease and Operation Exemption -- Lines of Burlington Northern Railroad Company* (not printed), served October 15, 1997, Finance Docket No. 31617, *Chesapeake & Albemarle R. Co. -- Lease, Acq. & Oper. Exempt - Southern Ry. Co.* (not printed), served September 19, 1991, Finance Docket No. 31102, *Wisconsin Central Ltd. Exempt Acq. & Oper. - Certain Lines of Soo L. R. Co.* (not printed), served July 28, 1988. The party seeking revocation of an exemption has the burden of proving that regulation of the transaction is necessary. *Id.*

Moreover, the Board's analysis in such matters focuses on the sections of the rail transportation policy that are related to the underlying statutory section from which the exemption was granted. *Minnesota Comm.* at 36. The Board does not revoke exemptions "because a section of the [rail transportation policy] *unrelated* to the underlying section of the statute requires revocation." *Id.* at 37. In addition, the Board does not extend its analysis beyond the issues that it would address in an application proceeding. *Id.* at 36-37.

Nothing in the Comments sets forth any evidence demonstrating that GFR's lease of the Line is inconsistent with the public convenience and necessity. Nor do the Comments allege, much less demonstrate, that GFR's lease of the Line is likely to substantially lessen competition, create a monopoly, or restrain trade in surface transportation.

For these reasons, the Comments of Senator Basham provide no basis for delaying, conditioning or revoking the Notice of Exemption

CONCLUSION

GIR respectfully urges the Board to allow the Notice of Exemption to go into effect without delay, and without the imposition of any conditions or completion of an environmental impact statement or public safety study

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Kari Morell", written over a horizontal line.

KARI MORELL
Of Counsel
BALL JANIK LLP
Suite 225
1455 F Street, N W
Washington, DC 20005
(202) 638-3307

Attorney for
GRAND ELK RAILROAD, LLC and WAICO
COMPANIES, INC

Dated. January 16, 2009

CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of January, 2009, I caused a copy of the foregoing
Reply to be served on all parties of record in this proceeding by first class mail, postage prepaid

A handwritten signature in black ink, appearing to read "Karl Morell", is written over a horizontal line.

Karl Morell